

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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| UNITED STATES OF AMERICA |) | |
| |) | |
| Plaintiff, |) | CIVIL ACTION NO. 1:10CV203 |
| |) | |
| v. |) | JUDGE: |
| |) | |
| HONEYWELL INTERNATIONAL INC., |) | |
| |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

COMPLAINT

The United States of America, by and through the undersigned attorneys, by the authority of the Attorney General of the United States, and at the request of and on behalf of the United States Environmental Protection Agency ("U.S. EPA"), alleges the following:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9606 and 9607, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 ("CERCLA"), against Honeywell International Inc., formerly known as AlliedSignal, Inc. ("Honeywell" or "Defendant"). The United States seeks, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), recovery of unreimbursed costs incurred by it for activities undertaken in response to the release or threatened release of hazardous substances at the third

operable unit ("OU3"), the former Tar Plant area at the Allied Chemical and Ironton Coke Superfund Site in Ironton, Lawrence County, Ohio (the "Site"). The United States also seeks injunctive relief requiring Defendant to take action to abate conditions at the OU3 area that may pose an imminent and substantial endangerment to the public health or welfare or the environment because of actual and threatened releases of hazardous substances into the environment at or from the OU3 area. Finally, the United States seeks a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), declaring that Honeywell is liable for any future response costs that the United States may incur in connection with response actions that may be performed pertaining to OU3.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b) and (c) because the claims arose and the threatened or actual releases of hazardous substances occurred in this district.

DEFENDANT

4. Defendant Honeywell is a Delaware corporation that owns and operates the Site, from which there has been a release, or a threatened release, of a hazardous substance which has caused the incurrence of response costs. Honeywell was formerly known as AlliedSignal, Inc. AlliedSignal, Inc. was the legal successor to the liability of Allied Corporation, Allied Chemical Corporation, and Ironton Solvay Coke Co. Honeywell and one or more of these predecessors owned and operated the Site, at the time of the disposal of a hazardous substance.

5. Defendant is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

GENERAL ALLEGATIONS

6. The Site is located at 3330-3331 S. 3rd Street in Ironton, Lawrence County, Ohio.

7. The Site is approximately 129 acres in size and is divided into three areas, or operable units, for purposes of the CERCLA cleanup. This Complaint pertains to OU3, which is the former Tar Plant area at the Site, which encompasses approximately 27 acres.

8. From approximately 1926 to 1977, Honeywell's predecessors manufactured coke at the Site. From approximately 1945 to 2000, Honeywell and its predecessors have manufactured various products at the Tar Plant located at the Site, including phthalic anhydride, creosotes, naphthalene, anthracene, and carbolic acids.

9. The Tar Plant manufactured products from the crude tar produced in the coking process. During its period of operation, the Tar Plant contained approximately 124 above-ground storage tanks and process tanks varying in size from approximately several hundred to 750,000 gallons, storage buildings, and maintenance operations.

10. Honeywell currently owns the OU3 area of the Site and Honeywell and its predecessors have owned that area as well as owned it, from approximately 1945 to 2000. Hazardous substances were disposed of at OU3 during the period in which the Honeywell and/or one or more of its predecessors owned and operated the Site.

11. The Site was placed on the National Priorities List on September 8, 1983, 48 Fed. Reg. 40658-40682. In response to the release or substantial threat of release of hazardous substances at or from OU3 of the Site, Honeywell performed a Remedial Investigation and

Feasibility Study (“RI/FS”) for OU3 of the Site pursuant to 40 C.F.R. § 300.430. Honeywell completed the RI/FS, and the FS report was approved by EPA in July 2007.

12. A record of decision (“ROD”) for OU3, dated September 2007, addresses soil, soil vapor, and Ohio River sediment contaminated by the releases from the former Tar Plant. The ROD calls for covering contaminated soil at OU3 with a cap that complies with Ohio solid waste regulations; land use controls to ensure the cap remains intact and thereby protects people from remaining contaminated soil and soil vapor; and a combination of dredging, off-site disposal and capping of contaminated sediment in the Ohio River adjacent to the Tar Plant’s loading dock.

13. The Site is a “facility” and OU3 is a “facility” within the meaning and scope of Sections 101(9) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(9) and 9607(a).

14. At times relevant to this action, there have been “releases” or threats of “releases,” within the meaning of Sections 101(22) and 107(a) of CERCLA, 42 U.S.C. § 9601(22) and § 9607(a), of hazardous substances into the environment at and from OU3 at the Site.

15. Hazardous substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been disposed of at OU3.

16. The United States has taken response actions, within the meaning of Section 101(25), 42 U.S.C. § 9601(25), at OU3, including but not limited to providing oversight in the field and managing contractor personnel. The United States continues to take response actions in connection with OU3.

FIRST CLAIM FOR RELIEF
(Response Costs)

17. The allegations contained in Paragraphs 1-16 are realleged and incorporated by reference herein.

18. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section-

* * * *

- (1) the owner and operator of a vessel or a facility, [and/or]
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, [and/or]
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, . . .

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for--

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan

19. The actions taken by the United States in connection with OU3 at the Site constitute "response" actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), in connection with which the United States has incurred response costs.

20. Honeywell is a member of the class of liable parties described in Sections 107(a)(1) and (2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and (2).

21. The costs incurred by the United States in connection with OU3 at the Site are not inconsistent with the National Contingency Plan, which was promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300 *et seq.*

22. The United States has incurred response costs in connection with OU3 at the Site in excess of \$39,824.39, which have not been reimbursed. The United States continues to incur response costs in connection with OU3.

23. The Defendant is jointly and severally liable to the United States for all response costs incurred and to be incurred by the United States in connection with OU3, including enforcement costs and prejudgment interest on such costs, pursuant to Sections 107(a)(1), (2), and (3) of CERCLA, 42 U.S.C. §§ 9607(a)(1), (2), and (3).

SECOND CLAIM FOR RELIEF
(Declaratory Judgment Under CERCLA Subsection 113(g)(2))

24. The allegations contained in Paragraphs 1-23 are realleged and incorporated by reference herein.

25. CERCLA Subsection 113(g)(2), 42 U.S.C. § 9613(g)(2), specifies that in any action for recovery of costs under CERCLA Section 107, 42 U.S.C. § 9607, “the court shall enter a declaratory judgment on liability for response costs . . . that will be binding on any subsequent action or actions to recovery further response costs”

26. The United States will continue to incur response costs associated with OU3, including governmental enforcement costs that are recoverable as response costs under CERCLA.

27. The United States is entitled to entry of a declaratory judgment that Honeywell is jointly and severally liable to the United States for future response costs incurred by United States in connection with OU3, to the extent that such costs are incurred in a manner not inconsistent with the National Contingency Plan.

THIRD CLAIM FOR RELIEF
(Injunctive Relief Under CERCLA Section 106, 42 U.S.C. § 9606)

28. Paragraphs 1-27 are realleged and incorporated herein by reference.

29. U.S. EPA has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of actual and threatened releases of hazardous substances into the environment at and from OU3.

30. Pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a), Honeywell is subject to injunctive relief to abate the danger or threat presented by releases or threatened releases of hazardous substances into the environment at and from OU3 at the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, prays that this Court:

1. Enter judgment in favor of the United States and against the Defendant for all costs, including prejudgment interest, incurred by the United States for response actions in connection with OU3 and not otherwise reimbursed;

2. Enter a declaratory judgment that the Defendant is liable for all future response costs incurred by the United States in connection with OU3;

3. Award the United States its costs of this action; and
4. Grant such other and further relief as this Court deems to be just and proper.

Respectfully submitted,

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